



# Department of Planning, Housing, & Community Development

Mayor, Richard C. David  
Director, Dr. Juliet Berling

## ***STAFF REPORT***

TO: Zoning Board of Appeals Members  
FROM: Planning Housing and Community Development  
DATE: May 21, 2015  
SUBJECT: 19 Chenango Street; Use Variance  
TAX ID #: 160.41-1-13  
CASE: 2015-11

---

### **A. REVIEW REQUESTED**

The project applicant has submitted an application for a Use Variance to permit residential use on the ground floor of a building where only commercial uses are permitted on ground floors. The property is zoned C-2 Downtown Business District. Residential uses are not permitted on the ground floor of buildings in this district, and therefore necessitates a Use Variance from the Zoning Board of Appeals.

The subject lot measures 22,940 square feet, with a frontage of 124' and a depth of 185'. The existing structure on the subject property is known as "The Press Building." The structure is a twelve-story, 94,426 square foot, office building. The applicant has proposed converting the building to a mixed use residential and commercial building, which includes 5 units (with a total of 9 beds) on the ground floor. Residential uses are not permitted on the ground floor of structures in the C-2 district, therefore the applicant requires a Use Variance.

In granting a use variance, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation**: That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances**: That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character**: That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.
- (d). **Self-created hardship**: That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the

health, safety, and welfare of the community.

## **B. ADDITIONAL REVIEWS**

Series A Site Plan Approval and a Special Use Permit is required from the Planning Commission for the conversion of the first through twelfth floors for multi-unit residential use.

CAUD is reviewing a proposed exterior staircase and repairs to the cornice of the building.

## **C. SITE REVIEW**

The subject property is improved by a 12-story structure, a covered pedestrian walkway known as “Press Alley” abutting the structure to the north, and a pedestrian plaza area to the west of the structure. The existing structure at the subject property was originally constructed in 1960, and is known as “the Press Building.”

The subject structure was most recently occupied by professional offices, but has been vacant since suffering damage resulting from a 2010 fire at an abutting property (83 Court Street).

The existing structure maintains primary point of ingress/egress is located at Chenango Street, with 2 additional access points along the northern boundary of the structure (within “Press Alley”) and a ground floor service access at the western wall of the structure. An elevated pedestrian walkway is attached to the 2nd story of the subject structure on its northern wall, extending to the abutting property/structure known as 21 Chenango Street.

The predominant land use in the vicinity is commercial, with retail businesses at the ground floor and upper-stories utilized for office use, but, increasingly, these upper-stories have been converted for residential use.

## **D. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY**

### 83 Court Street:

- In October of 2008, the Planning Commission approved a Series A Site Plan / Special Use Permit to Stellar 6001, LLC for a 2<sup>nd</sup>-5<sup>th</sup> floor multi-unit residential (200 total BRs, mixture of lofts, 1 BR and 2BR units) and Basement/1<sup>st</sup> Floor retail development in the C-2 District.
- In May and June of 2013, the Planning Commission granted Series A Site Plan & Special Use Permit approval, with a condition, to Stellar 83 Court, LLC for a Mixed-Use Project (Multi-Unit Dwelling: 76 Units/180 Bedrooms within Lower Level & 2<sup>nd</sup>-5<sup>th</sup> stories and 1<sup>st</sup> Floor Commercial Uses TBD) in the C-2, Downtown Business District.

“That a Public Improvement Plan be submitted to Planning Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with Planning Commission requirements for the project as provided for in this Approval. This plan must include detail for:

- Reconstruction of ground surfaces, curb and gutter within property frontages surrounding the structure’s northwest corner (western Commercial Alley Pedway frontage and northern Commercial Alley frontage) with appropriate materials and features to promote safe use by both service/delivery vehicle traffic and pedestrian traffic;

- Reconstruction of ground surfaces, curb and gutter within Commercial Alley ROW extending west from the subject property's northern frontage until State Street with appropriate materials and features to promote safe use by both service/delivery vehicle traffic and pedestrian traffic accessing the site;
- Installation of user amenities and aesthetic improvements within Commercial Alley Pedway frontage;
- A Lighting Plan for the subject property's north and west frontages;
- Bicycle parking facilities near each of 3 access points for the subject structure (Commercial Alley, Chenango Street, Court Street).

The Planning Division will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.”

25 Chenango Street: In February, 2014, the Planning Commission granted Series A Site Plan & Special Use Permit approval to 25 Chenango Street Associates, LLC to convert an existing vacant building into a multi-family dwelling containing 5 dwelling units with 38 bedrooms, in the C-2, Downtown Business District.

21 Chenango Street: In June, 2013, the Planning Commission granted Series A Site Plan & Special Use Permit approval to Stellar 83 Court, LLC for conversion of 2<sup>nd</sup> & 3<sup>rd</sup> floors of an existing structure for use as Multi-Unit Dwelling (16 Units, 30 Bedrooms), with the 1<sup>st</sup> floor reserved for Commercial Use Tenant To Be Determined, in the C-2, Downtown Business District.

15-17 Chenango Street, 1 Commercial Alley, 83-85 & 87 Court Street: The Planning Commission approved a Series A Site Plan Review application submitted by Satra Realty in January of 2001 for the conversion of the second, third, fourth, and fifth floors of an existing building to apartments for students (45 One Bedroom, 2 Two-Bedroom), with 1<sup>st</sup> floor reserved for commercial uses.

25 Chenango Street: In January, 2009, QJ, LLC was granted Series A Site Plan/SUP approval for a mixed use, multi-unit residential and commercial development in the C-2 District.

42 Chenango Street: In 1989, the First Presbyterian Church was granted a use variance to construct a memorial garden and columbarium in a C-2, Downtown Business district.

60-68 Court Street: Adam Weitsman was given a Special Use Permit by the Planning Commission in March of 2000 to operate a billiard/pool hall.

60-68 Court Street: In June of 2011, the Planning Commission approved a series A Site Plan / Special Use Permit for a Cultural Facility and a Multi-Unit Dwelling (More than 4 Bedrooms) in the C-2 District.

73 Court Street: In April of 2011, the Planning Commission approved a Series A Site Plan / Special Use Permit for the conversion of upper-floor space to a Dormitory, Off-Campus.

73 Court Street: In June of 2012, Planning Staff granted a Series A Site Plan / Special Use Permit Exception for a Tavern in a former Tavern space.

80 Court Street: In March of 2010, the Planning Commission approved a Series A Site Plan / Special Use Permit for the conversion of a commercial space to two dwelling units.

## E. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board should be the lead agency to determine any environmental significance related to the use and area variances.

1. Motion to determine what type of action:
  - a. Type I
  - b. Type II
  - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF) – see below.

**SEQR EAF Part 2 - Impact Assessment.** The Lead Agency (ZBA) is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the ZBA. When answering the questions the ZBA should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		<b>X</b>
Will the proposed action result in a change in the use or intensity of use of land?		<b>X</b>
Will the proposed action impair the character or quality of the existing community?	<b>X</b>	
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<b>X</b>	
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<b>X</b>	
Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<b>X</b>	
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?	<b>X</b>	
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		<b>X</b>
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<b>X</b>	
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?	<b>X</b>	

Will the proposed action create a hazard to environmental resources or human health?	<b>X</b>	
--	----------	--

**EAF Part 3 - Determination of significance.** For every question in Part 2 that answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the ZBA determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The ZBA may issue a Negative Declaration if it is determined that the proposed action will not result in any significant adverse environmental impacts.

## **F. REQUIRED FINDINGS**

The Zoning Board of Appeals must address how the requested variances meet the following findings. The Board may consider and incorporate the findings provided by the applicant (see attached Planning and Zoning Application).

**Use Variance Findings:** Section 410.92C of the Zoning Code states that the Zoning Board of Appeals shall not grant a use variance until the applicant has shown that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate the following to the Zoning Board of Appeals:

**(a) Reasonable return:** The board must determine that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

**(b) Unique hardship:** The board must determine that the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.

**(c) Essential character of the neighborhood:** The board must determine that granting the variance will not alter the essential character of the neighborhood.

**(d) Not self-created hardship:** The board must determine that the alleged hardship has not been self-created.

## **I. SUGGESTED CONDITIONS**

## **J. ENCLOSURES**

Enclosed is a copy of the site plan, site photographs and application.